(9)

Supreme Court, U.S.
FILED
JUL 26 1996
CLERK

No. 95-1411

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

LINDA J. BLESSING, Director, Arizona Department of Economic Security, in her official capacity,

Petitioner,

v.

CATHY FREESTONE, SUSAN HARRINGTON, SONYA MADRID, JUDITH ROGERS and ESPERANZA LAUSTAUNAU, individually, on behalf of their minor children and on behalf of all persons similarly situated,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICI CURIAE* THE STATES OF ILLINOIS, ALABAMA, ALASKA, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, FLORIDA, GEORGIA, HAWAII, IDAHO, INDIANA, IOWA, KANSAS, LOUISIANA, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MISSISSIPPI, MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NEW YORK, NORTH CAROLINA, NORTH DAKOTA, OHIO, OKLAHOMA, OREGON, PENNSYLVANIA, RHODE ISLAND, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, VERMONT, VIRGINIA, WASHINGTON, WYOMING, AND THE DISTRICT OF COLUMBIA, AMERICAN SAMOA, GUAM, AND THE VIRGIN ISLANDS IN SUPPORT OF PETITIONER

JAMES E. RYAN
Attorney General of Illinois

BARBARA A. PREINER
Solicitor General of Illinois

JAMES C. O'CONNELL*
BARBARA L. GREENSPAN
JAMES C. STEVENS
Special Assistant Attorneys General
160 N. LaSalle Street, Suite N-1000
Chicago, Illinois 60601
(312) 793-2380

Attorneys for Amicus Curiae, State of Illinois

* Counsel of Record

(Additional Attorneys General Listed on Following Page)

Printed by Authority of the State of Illinois (P.O. 36607—60—7-26-96)

42 pp

Additional Attorneys Genera.

JEFF SESSIONS
Attorney General of Alabama
11 South Union Street
Montgomery, Alabama 36130
(334) 242-7300

BRUCE M. BOTELHO
Attorney General of Alaska
Post Office Box 110300
Dimond Courthouse
Juneau, Alaska 99811-0300
(907) 465-3600

DANIEL E. LUNGREN
Attorney General of California
1300 I Street
Sacramento, California 95814
(916) 324-5437

GALE A. NORTON
Attorney General of Colorado
1525 Sherman Street, 5th Floor
Denver, Colorado 80203
(303) 866-3052

RICHARD BLUMENTHAL
Attorney General of Connecticut
55 Elm Street
Hartford, Connecticut 06141-0120
(860) 566-7279

M. JANE BRADY
Attorney General of Delaware
820 N. French Street
Wilmington, Delaware 19801
(302) 577-2500

ROBERT A. BUTTERWORTH
Attorney General of Florida
The Capitol
Tallahassee, Florida 32399-1050
(904) 488-9935

MICHAEL J. BOWERS
Attorney General of Georgia
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300
(404) 635-7174

MARGERY S. BRONSTER
Attorney General of Hawaii
Hale Auhau
425 Queen Street
Honolulu, Hawaii 96813
(808) 586-1500

ALAN G. LANCE
Attorney General of Idaho
Post Office Box 83720
Boise, Idaho 83720-0010
(208) 334-2400

PAMELA S. CARTER
Attorney General of Indiana
Office of the Attorney General
402 W. Washington Street
5th Floor
Indianapolis, Indiana 46204
(317) 232-6316

THOMAS J. MILLER
Attorney General of Iowa
Hoover State Office Building
Des Moines, Iowa 50319
(515) 281-5164

CARLA J. STOVALL
Attorney General of Kansas
301 S.W. 10th Avenue
Topeka, Kansas 66612-1597
(913) 296-2215

RICHARD P. IEYOUB
Attorney General of Louisiana
Office of the Attorney General
Department of Justice
Post Office Box 94095
Baton Rouge, Louisiana 70804-9005
(504) 342-7013

ANDREW KETTERER
Attorney General of Maine
Office of the Attorney General
State House Station #6
Augusta, Maine 04333-0006
(207) 626-8800

J. JOSEPH CURRAN, JR.
Attorney General of Maryland
Office of the Attorney General
200 Saint Paul Place
Baltimore, Maryland 21202-2021
(410) 576-6955

SCOTT HARSHBARGER
Attorney General of Massachusetts
Office of the Attorney General
One Ashburton Place
Boston, Massachusetts 02108
(617) 727-2200

FRANK J. KELLEY
Attorney General of Michigan
Post Office Box 30212
Lansing, Michigan 48909-0212
(517) 373-1110

MIKE MOORE
Attorney General of Mississippi
Post Office Box 220
Jackson, Mississippi 39205
(601) 359-3680

JOSEPH P. MAZUREK
Attorney General of Montana
Justice Building
Post Office Box 201401
Helena, Montana 59620-1401
(406) 444-2026

DON STENBERG
Attorney General of Nebraska
Department of Justice
2115 State Capitol
Lincoln, Nebraska 68509
(402) 471-2682

FRANKIE SUE DEL PAPA
Attorney General of Iowa
198 South Carson Street
Carson City, Nevada 89710
(702) 687-4170

JEFFREY R. HOWARD
Attorney General of New Hampshire
33 Capitol Street
Concord, New Hampshire 03301
(603) 271-3658

PETER VERNIERO
Attorney General of New Jersey
25 Market Street, CN 080
Trenton, New Jersey 08625
(609) 984-9664

Additional Attorneys General

DENNIS C. VACCO
Attorney General of New York
The Capitol
Albany, New York 12224
(518) 474-8101

MICHAEL F. EASLEY
Attorney General of North Carolina
Post Office Box 629
Raleigh, North Carolina 27602-0629
(919) 571-4114

HEIDI HEITKAMP
Attorney General of North Dakota
600 E. Boulevard
Bismarck, North Dakota 58505-0040
(701) 328-2210

BETTY D. MONTGOMERY
Attorney General of Ohio
30 E. Broad Street
Columbus, Ohio 43215
(614) 466-3376

W.A. DREW EDMONDSON
Attorney General of Oklahoma
2300 N. Lincoln Boulevard
Suite 112
Oklahoma City, Oklahoma 73105
(405) 521-3921

THEODORE R. KULONGOSKI
Attorney General of Oregon
100 Justice Building
Salem, Oregon 97310
(503) 378-4402

THOMAS W. CORBETT, JR.
Attorney General of Pennsylvania
Office of the Attorney General
Strawberry Square
Harrisburg, Pennsylvania 17120
(717) 787-3391

JEFFREY B. PINE
Attorney General of Rhode Island
150 South Main Street
Providence, Rhode Island 02903
(401) 274-4400

CHARLES MOLONY CONDON
Attorney General of South Carolina
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3970

MARK BARNETT
Attorney General of South Dakota
500 East Capitol Avenue
Pierre, South Dakota 57501-5070
(605) 773-3215

CHARLES W. BURSON
Attorney General & Reporter
State of Tennessee
500 Charlotte Avenue
Nashville, Tennessee 37243-0497
(615) 741-6474

DAN MORALES
Attorney General of Texas
Post Office Box 12548
Austin, Texas 78711-2548
(512) 463-2100

Additional Attorneys General

JAN GRAHAM
Attorney General of Utah
236 State Capitol
Salt Lake City, Utah 84114
(801) 538-9600

JEFFREY L. AMESTOY
Attorney General of Vermont
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609-1001
(802) 828-3171

JAMES S. GILMORE, III
Attorney General of Virginia
900 East Main Street
Richmond, Virginia 23219
(804) 786-2071

CHRISTINE O. GREGOIRE
Attorney General of Washington
7th Floor Highways-Licenses Bldg.
Post Office Box 40100
Olympia, Washington 98504-0100
(360) 753-6245

WILLIAM U. HILL
Attorney General of Wyoming
123 State Capitol
Cheyenne, Wyoming 82002
(307) 777-7841

CHARLES F.C. RUFF
Corporation Counsel
District of Columbia
441 Fourth Street, N.W.
Washington, D.C. 20001
(202) 727-6252

MALAETASI M. TOGAFAU
Attorney General of
American Samoa
Office of the Attorney General
Department of Legal Affairs
American Samoa Government
Post Office Box 7
Pago Pago, American Samoa 96799
(684) 633-4163

CALVIN E. HOLLOWAY, SR.
Attorney General of Guam
Office of the Attorney General
Suite 2-200E
Judicial Center Building
120 West O'Brien Drive
Agana, Guam 96910

JULIO A. BRADY
Attorney General of the
Virgin Islands
Office of the Attorney General
Department of Justice
G.E.R.S. Complex
48B-50C Kronprinsdens Gade
St. Thomas, Virgin Islands 08802
(809) 774-5666

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES iii

STATEMENT OF INTEREST 1

SUMMARY OF ARGUMENT 3

ARGUMENT 4

I.

CONGRESS NEVER INTENDED TITLE IV-D OF THE SOCIAL SECURITY ACT TO CREATE ENFORCEABLE RIGHTS TO CHILD SUPPORT ENFORCEMENT SERVICES 4

A. Standard Of Review And Legislative Intent 4

B. The History Of Federal Child Support Enforcement Legislation Demonstrates That Title IV-D Does Not Create Enforceable Rights 6

1. Title IV-D was enacted to reduce the costs of welfare to society and not for the especial benefit of custodial parents and their children 6

2. Legislative intent reveals no congressional purpose to provide enforceable rights to Title IV-D services 12

3. Title IV-D regulations establish that federal funds are not unambiguously conditioned upon strict compliance with federal requirements 15

II.

THE COMPREHENSIVE INTERNAL ENFORCEMENT SCHEME OF TITLE IV-D ESTABLISHES A LEGISLATIVE INTENT TO FORECLOSE PRIVATE ACTIONS UNDER 42 U.S.C. §1983 19

CONCLUSION 26

TABLE OF CITED AUTHORITIES

Cases PAGE(S)

Albiston v. Maine Commissioner of Human Services, 7 F.3d 258 (1st Cir. 1993) 1

Behunin v. Jefferson County Department of Social Services, 744 F. Supp. 255 (D. Colo. 1990) 1

Carelli v. Howser, 923 F.2d 1208 (6th Cir. 1991) . 24

Cort v. Ash, 422 U.S. 66 (1975) 5, 19, 20

Davis v. McClaran, 909 S.W.2d 412 (Tenn. 1995) . 1

Edwards v. District of Columbia, 821 F.2d 651 (D.C. Cir. 1987) 5

Freestone v. Cowan, 68 F.3d 1141 (9th Cir. 1995) . 1

Golden State Transit Corp. v. Los Angeles, 493 U.S. 103 (1989) 4

Howe v. Ellenbecker, 8 F.3d 1258 (8th Cir. 1983) . 1

King v. Bradley, 829 F. Supp. 989 (N.D. Ill. 1993) . 1, 17

Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992) . 19

Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803) . 19

Merrell Dow Pharmaceutical, Inc. v. Thompson, 478 U.S. 804 (1986) 5, 19, 20

Monzon v. Martinez, 833 F. Supp. 479 (E.D. Pa. 1993) 1

Pennhurst State School & Hospital v. Halderman, 451 U.S. 1 (1981) 3, 4, 5

State of Ohio, DHS v. Sullivan, 789 F. Supp. 1395 (S.D. Ohio 1992) 16

Sullivan v. Stroop, 496 U.S. 478 (1990) 6

Suter v. Artist M., 503 U.S. 347 (1992) 3, 4, 5, 17

Thompson v. Thompson, 484 U.S. 174 (1988) .. 5
Victorian v. Miller, 813 F.2d 718 (5th Cir. 1987) .. 21
Wehunt v. Ledbetter, 875 F.2d 1558 (11th Cir. 1989) 6, 7, 24
Wilder v. Virginia Hospital Association, 496 U.S. 498 (1990) 4, 6
Wright v. Roanoke Redevelopment and Housing Authority, 479 U.S. 418 (1987) ..... *passim*

Constitution

Art. I, § 8, cl. 1 7

Statutes

7 U.S.C. § 2014 (1996) 8
42 U.S.C. § 304 (1996) 23, 24
42 U.S.C. § 503 (b) (1996) 23, 24
42 U.S.C. §§ 601-617 (1935) (amended 1975) 6
42 U.S.C. § 602 (a) (1996) 8
42 U.S.C. § 602 (a) (26) (1996) 9
42 U.S.C. § 603 (h) (1996) 9, 20, 21, 22
42 U.S.C. § 603 (h) (1984) 11, 13
42 U.S.C. § 604 (a) (1996) 23, 24
42 U.S.C. § 651 (1975) (amended 1984) 6, 11
42 U.S.C. §§ 651-669 (1975) 6
42 U.S.C. § 652 (1975) 9
42 U.S.C. § 652 (1984) 13
42 U.S.C. § 652 (1988) 15, 24

42 U.S.C. § 652 (1996) 16, 19, 23, 24
42 U.S.C. § 654 (1975) 9
42 U.S.C. § 654 (6) (1975) (amended 1981) 10
42 U.S.C. § 664 (c) (2) (1996) 11
42 U.S.C. § 655 (a) (1) (C) (1988) 24
42 U.S.C. § 666 (b) 1984) (amended 1988) 12
42 U.S.C. § 681 (1988) 14
42 U.S.C. § 682 (h) (1988) 15
42 U.S.C. § 1204 (1996) 23, 24
42 U.S.C. § 1316 (1996) 23
42 U.S.C. § 1983 ..... *passim*

Regulations

45 C.F.R. § 303.72 (a) (1994) 11
45 C.F.R., Part 305 15
45 C.F.R. § 305.11 (1994) 20, 21
45 C.F.R. § 305.20 (1985) 13
45 C.F.R. § 305.20 (a) (2) (1985) 14
45 C.F.R. § 305.20 (a) (4) (1994) 16
45 C.F.R. § 305.21 (d) (1994) 18
45 C.F.R. § 305.98 (1985) 13
45 C.F.R. § 305.99 (1994) 22
45 C.F.R. § 305.99 (c) (1994) 20, 21
45 C.F.R. § 305.99 (d) (1994) 23

Legislative Materials

Pub. L. No. 88-525, § 2, 78 Stat. 703 (1964) ... 7, 8

Social Services Amendments of 1974, Pub. L. No. 93-647, § 451, 1974 U.S.C.C.A.N. (88 Stat.) 2716 ..... 8, 9

Family Support Act of 1988, Pub. L. No. 100-485, § 401, 1983 U.S.C.C.A.N. (102 Stat.) 2343 .... 7, 8

S. Rep. No. 93-1356, 93d Cong., 2d Sess. (1974), *reprinted in* 1974 U.S.C.C.A.N. 8133 10

S. Rep. No. 98-387, 98th Cong., 2d Sess (1984), *reprinted in* 1984 U.S.C.C.A.N. 2397 ..... 5, 20, 21

Staff of Senate Comm. on Finance, 94th Cong., 1st Sess., Child Support Data and Materials (Comm. Print 1975) 10

Child Support Enforcement Program: Hearings Before the Subcomm. on Public Assistance and Unemployment Compensation of the House Comm. on Ways and Means, 100th Cong., 2d Sess. (1988) 15

Welfare: Reform or Replacement? Hearing Before the Subcomm. on Social Security and Family Policy of the Senate Comm. on Finance 100th Cong., 1st Sess. (1987) 14

Miscellaneous

Child Support Enforcement Nineteenth Annual Report to Congress (1994), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement 25

Child Support Enforcement Program: Paternity Establishment and Revision of Child Support Enforcement Program and Audit Regulations, 59 Fed. Reg. 66204 (1994) 15, 16, 17

Estimates of Cost Avoidance Attributable to Child Support Enforcement, Advanced Sciences, Inc. and SRA Technologies, Arlington, VA. 1987, for the Office of Child Support Enforcement, Family Support Administration, U.S. Department of Health and Human Services 11

Garfinkel & McLanahan, *Single Mothers and Their Children: A New American Dilemma*, Urban Institute Press, Washington, D.C. (1986) 7

STATEMENT OF INTEREST

The *amici curiae* States of Illinois, Alabama, Alaska, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and Wyoming, the District of Columbia, American Samoa, Guam, and the Virgin Islands, submit this brief pursuant to Supreme Court Rule 37 in support of the Petitioner, Linda J. Blessing, Director, Arizona Department of Economic Security, requesting reversal of the decision rendered by the United States Court of Appeals for the Ninth Circuit in *Freestone v. Cowan*, 68 F.3d 1141 (9th Cir. 1995).

The *Freestone* decision, and the other cases which are in accord,[1] substantially broaden the scope of State liability under 42 U.S.C. §1983 by allowing courts to find that federal regulations create enforceable rights to sue State actors in federal court. The Ninth Circuit decision, if affirmed, will dramatically alter the States' responsibilities for child support enforcement. There will also be an increased burden on the federal courts, since any individual who claims not to have received some child support

---

[1] *Albiston v. Maine Commissioner of Human Services*, 7 F.3d 258 (1st Cir. 1993); *Davis v. McClaran*, 909 S.W.2d 412 (Tenn. 1995); *Howe v. Ellenbecker*, 8 F.3d 1258 (8th Cir. 1993); *King v. Bradley*, 829 F. Supp. 989 (N.D. Ill. 1993); *Monzon v. Martinez*, 833 F. Supp. 479 (E.D. Pa. 1993); *Behunin v. Jefferson County Department of School Services*, 744 F. Supp. 255 (D. Colo. 1990).

enforcement service will have the ability to bring an action in federal court. The State IV-D agencies, and the State courts, would be subject to varying orders from State and federal courts to "hurry up" or to engage in a court-created process in each of these individual cases. There would be a concomitant increase in each State's cost of providing child support enforcement services. Ultimately, this would divert fiscal resources from the actual collection of child support and impose enormous financial and programmatic burdens on State IV-D programs. This ruling would open the door for multitudinous suits to determine individual rights created by federal regulation.

Everyone agrees child support enforcement programs are a necessity in today's society. Collecting child support to remove families from welfare and prevent other families from entering the welfare system is sound public policy. Since the original legislation in 1975, this country has moved steadily toward establishing effectively run child support enforcement programs at both the State and federal levels. New and innovative methods of collecting child support from errant responsible relatives are being tested on an ongoing basis. Some methods have proven to work better than others. The most effective methods of collecting child support are being put into place.

It must be acknowledged, however, that child support enforcement programs are not yet perfect. In fact, it is questionable whether they will ever become perfect. Reality dictates otherwise. Congress has never expected or required the States to run perfect IV-D programs. For this Court to allow litigants to sue to require more from the States is contrary to Congress' intent and sound public policy.

SUMMARY OF ARGUMENT

At issue before this Court is the ruling of the United States Court of Appeals for the Ninth Circuit holding that Title IV-D of the Social Security Act creates enforceable rights in the plaintiff class and that the statute does not contain an enforcement scheme sufficiently comprehensive to preclude a §1983 action. The enforceable rights analysis of the Ninth Circuit reflects a disregard of the governing principles expressed by this Court in *Pennhurst State School & Hospital v. Halderman*, 451 U.S. 1 (1981) ("Pennhurst I"), and *Suter v. Artist M.*, 503 U.S. 347 (1992). Congress did not intend to create a new federal entitlement to child support enforcement services by enacting Title IV-D in 1975, or by any of the subsequent additions and amendments. Or, if Title IV-D was intended to create new federal property rights, Congress certainly did not intend for the federal courts to oversee the provision of State court family law services by State officials through private §1983 enforcement actions.

Title IV-D contains a complex and comprehensive internal regulatory enforcement mechanism. Congress created an entirely new and separate administrative agency in the Office of Child Support Enforcement (hereinafter "OCSE"), within the Department of Health and Human Services (hereinafter "HHS"), to implement, assess, and enforce Title IV-D. Considerable technical expertise is necessary to understand what is required for each State to develop an efficient and effective child support enforcement program which works efficiently and effectively with the other States and Territories. Congress committed this task to the OCSE and not to the federal judiciary, except by the normal process of judicial review of administrative agency action.

ARGUMENT

I.

CONGRESS NEVER INTENDED TITLE IV-D OF THE SOCIAL SECURITY ACT TO CREATE ENFORCEABLE RIGHTS TO CHILD SUPPORT ENFORCEMENT SERVICES.

A. Standard Of Review And Legislative Intent.

This Court has held that there are two distinct questions of law which control whether a federal cause of action results from the interaction of a federal statute and 42 U.S.C. §1983. A court must first decide whether Congress intended the statute to create rights sufficiently definite and certain for enforcement by the §1983 remedy. *Suter v. Artist M.*, 503 U.S. 347, 357 (1992); *Wilder v. Virginia Hospital Association*, 496 U.S. 498, 508 (1990); *Wright v. Roanoke Redevelopment and Housing Authority*, 479 U.S. 418, 423 (1987); *Pennhurst State School & Hospital v. Halderman* (*Pennhurst I*), 451 U.S. 1, 18-28 (1981). If the statute was intended to benefit the putative plaintiff, "the provision creates an enforceable right unless it reflects merely a 'congressional preference' for a certain kind of conduct rather than a binding obligation on the governmental unit, . . . or unless the interest the plaintiff asserts is 'too vague and amorphous' such that it is 'beyond the competence of the judiciary to enforce.' " *Wilder*, 496 U.S. at 509 (citing *Golden State Transit Corp. v. Los Angeles*, 493 U.S. 103, 106 (1989), *quoting Wright v. Roanoke*, 479 U.S. at 431-32). Finally, if a statute does create enforceable rights within the meaning of §1983, a court must then decide whether Congress has foreclosed enforcement of the statute in the enactment itself. *Id.* at 508.

The first inquiry is to determine the intent of federal legislation. Congressional intent may be discerned from legislative history, the language of the statutes themselves, and the structure of the statutory scheme as a whole. *Suter*, 503 U.S. at 357. Courts have focused primarily on whether the statutory language is literally mandatory, and its degree of specificity. *Pennhurst I*, 451 U.S. at 19; *see, e.g., Edwards v. District of Columbia*, 821 F.2d 651, 654-656 (D.C. Cir. 1987).

This Court has previously identified four factors which are present when a federal statute does not create enforceable rights:

> (1) the plaintiffs are not part of the class for whose especial benefit the statute was passed; (2) the indicia of legislative intent reveals no congressional purpose to provide a private cause of action; (3) a federal cause of action would not further the underlying purposes of the legislative scheme; and (4) the respondents' cause of action is a subject traditionally relegated to state law.[2]

Cort v. Ash, 422 U.S. 66, 78-79 (1975); *see also Merrell Dow Pharmaceutical, Inc. v. Thompson*, 478 U.S. 804, 810-12 (1986). Although these four factors were used to determine whether a statute creates an implied right of action in favor of a particular plaintiff, there is a significant area of overlap remaining between that determina-

---

[2] This case involves child support enforcement and establishment of paternity. Congress acknowledges that the basic responsibility for child support and establishment of paternity is left to the States. S. Rep. No. 98-387, 98th Cong., 2d Sess. 6-7 (1984), *reprinted in* 1984 U.S.C.C.A.N. 2397, 2402-2403. Moreover, there has been a long-standing tradition of reserving domestic relations matters to the States. *Thompson v. Thompson*, 484 U.S. 174, 186 n.4 (1988).

tion and the determination of whether a federal statute confers substantive rights on a § 1983 plaintiff. *See Wilder*, 496 U.S. at 525-26 (Rehnquist, C.J., dissenting).

B. The History Of Federal Child Support Enforcement Legislation Demonstrates That Title IV-D Does Not Create Enforceable Rights.

1. Title IV-D was enacted to reduce the costs of welfare to society and not for the especial benefit of custodial parents and their children.

Title IV-D, "Child Support and Establishment of Paternity," was added to the Social Security Act in 1975. 42 U.S.C. §§651-669 (1975). Title IV-D has always been inextricably intertwined with Title IV-A, Aid to Families with Dependent Children ("AFDC"). 42 U.S.C. §§601-617 (1935) (amended 1975); *Sullivan v. Stroop*, 496 U.S. 478, 483 (1990). Both Title IV-A and Title IV-D operate through federal grants-in-aid contracts with participating States; States receive federal matching funds for State expenditures for programs which must meet federal legislative and contractual requirements.

The legislative history, the structural connections between Title IV-D and Title IV-A statutes, and certain features of the statutes themselves, show that Congress intended IV-D to produce general benefits to society as a whole, the most immediate and direct being welfare cost avoidance by reducing poverty in the rapidly growing class of children of absent parents and their custodians. *See Wehunt v. Ledbetter*, 875 F.2d 1558, 1565 (11th Cir. 1989). The purpose of federal child support legislation has always been to mitigate the social costs which flow from the sharp and continuing proportional increase

of impoverished single parents and children.[3] Congress hoped to realize several national welfare benefits by improving the socio-economic status of a distinct group burdened with a particular set of disadvantages. Congress never intended the legislation making federal funds available for State child support enforcement programs to confer a new federal "entitlement" on millions of individuals who must or may receive IV-D services.

AFDC, which was constitutionally grounded on the federal spending powers, originated during the 1930's.[4] Title IV-A has always been a joint federal and State welfare program, administered by the States in accordance with federal requirements, delivering financial assistance to poor families with children who are economically deprived of support from two parents due to absence, incapacity, or death of one parent.[5]

---

[3] This trend is not limited to the United States; it is global, and generally attributed by scholars and researchers to the effect of modern industrial technology and economic systems on family and social structures. *See* Garfinkel & McLanahan, *Single Mothers and Their Children: A New American Dilemma*, Urban Institute Press, Washington, D.C. (1986), pp. 12, 46, 55-85, 173.

[4] Article I, § 8, cl. 1, of the U.S. Constitution contains the spending power, which provides, "Congress shall have Power To . . . provide for the . . . general Welfare of the United States." Title IV-D was also enacted by Congress pursuant to its spending power. Social Services Amendments of 1974, Pub. L. No. 93-647, §451 *et seq.*, 1974 U.S.C.C.A.N. (88 Stat.) 2716, 2732. *See also Wehunt v. Ledbetter*, 875 F.2d at 1563.

[5] In 1961, States were given the option of extending AFDC benefits to two parent families where the principle wage-earner is underemployed, or unemployed and ineligible for unemployment insurance (AFDC-UP). The Family Support Act

(continued...)

The original federal child support enforcement provisions were exclusively directed at collecting support to decrease the costs of AFDC and other welfare programs.[6] Any support collected was paid to the family, and was counted as income to the recipients for purposes of AFDC eligibility. In 1975, Congress decided to: separate the State child support enforcement activities organizationally from IV-A financial assistance activities; overrule judicial decisions which had prevented garnishment of federal payments to child support obligators; impose federal requirements designed to achieve both improved State family law enforcement mechanisms and national consistency in certain aspects of family law; include non-AFDC recipients; provide increased incentives to States to actively pursue child support enforcement; and increase federal assistance to and oversight of State programs. Social Services Amendments of 1974, Pub. L. 93-647, §451 *et seq.*, 1974 U.S.C.C.A.N. (88 Stat.) 2716, 2732 (codified at 42 U.S.C. §602 (a)).

---

[5] (...continued)
of 1988 made AFDC-UP mandatory for all IV-A programs for a trial period to end in 1998. Family Support Act of 1988, Pub. L. No. 100-485, §401, 1988 U.S.C.C.A.N. (102 Stat.) 2343, 2396.

[6] AFDC recipients are automatically eligible for food stamps, and housing benefits, due to the relative eligibility standards. 7 U.S.C. §2014 *et seq.* (1996). Food stamps began in 1964. Pub. L. No. 88-525, §2, 78 Stat. 703 (1964). Benefits between all three programs are coordinated, as the monetary value of a family's monthly food stamps allotment and housing subsidies may be counted as income for purposes of AFDC benefits. Cost avoidance in non-AFDC welfare programs has always been a goal of federal child support legislation.

Title IV-A required participation in a separate child support enforcement program under Title IV-D as a condition of IV-A participation. *Id.*, 1974 U.S.C.C.A.N. (88 Stat.) 2716, 2742. The sanction for failing to operate a State IV-D program in compliance with federal requirements was, and still is, reduction in federal IV-A payments. There has never, however, been a noncompliance sanction on federal IV-D payments. 42 U.S.C. §603 (h) (1996).

The federal child support enforcement program established in Title IV-D remains adjunct to IV-A; States must participate in both to participate in either. Applicants and recipients are required to: 1) assign to the granting State all rights to support from any third party which have accrued at the time of assignment; and 2) cooperate in establishing paternity and support obligations and in enforcing assigned obligations, unless the State IV-A agency finds good cause for failure to cooperate, based on federal standards considering the child's best interests. 42 U.S.C. §602 (a) (26) (1996).

Congress created a separate organizational unit within HHS to administer Title IV-D, the OCSE. 42 U.S.C. §652 (1975). Congress delegated to OSCE the discretionary authority to define an "efficient and effective" State child support program, to decide whether States were complying with federal IV-D requirements based on annual program audits. *Id.* The original IV-D services included locating absent parents, establishing paternity and support obligations, and enforcing support obligations assigned to the State under U.S.C. §602 (a) (26). 42 U.S.C. §654 (1975).

Congress also decided that non-AFDC families should receive IV-D enforcement services which again shows the

legislative focus on cost avoidance, rather than creation of a new entitlement. 42 U.S.C. §654 (6) (1975) (amended 1981). Extending IV-D services to non-AFDC families produced significant cost avoidance.

> [T]he problem of non-support is broader than the AFDC rolls and . . . many families might be able to avoid the necessity of applying for welfare in the first place if they had adequate assistance in obtaining the support due from absent parents.

S. Rep. No. 93-1356, 93d Cong., 2d Sess. (1974), *reprinted in* 1974 U.S.C.C.A.N. 8133, 8158. The staff materials prepared for the Senate Committee on Finance regarding the Title IV-A and IV-D legislation of 1975 can leave little doubt that economic and spending issues were of paramount importance to the legislators. Staff of Senate Comm. on Finance, 94th Cong., 1st Sess., Child Support Data and Materials, pp. 1-5, and Appendixes, pp. 123-139 (Comm. Print 1975).

In 1984, Congress took steps to insure that State IV-D programs would obtain the welfare cost avoidance benefits from both non-AFDC support collections and recovery of AFDC costs. While many of the savings in social and governmental costs realized by redistributing income from absent parents to the custodial family are intangible or so indirect that measurement is difficult or impossible, research demonstrates some significant success in achieving welfare cost avoidance from non-AFDC support collections. A study commissioned by OCSE found that during 1983 and 1984, every $5.00 in non-AFDC child support collected represented $1.00 in welfare cost savings because collections either prevented non-AFDC families from participating in AFDC, Medicaid, and/or

food stamps, or reduced the amount of assistance payments.[7]

In 1980, the 75% federal financial participation for non-AFDC IV-D services was made permanent, but this incentive had not prompted all States to pursue non-AFDC cases. Therefore in 1984, Congress changed the purpose statement for IV-D to specifically state the program was intended to establish and enforce parental duties of support to all children who need assistance, regardless of whether they receive AFDC. 42 U.S.C. §651 (1975) (amended 1984). Congress wanted AFDC reimbursement as well as achieving other kinds of welfare cost avoidance flowing from non-AFDC collections.

Despite the legislative directive to provide IV-D services to non-AFDC families, certain distinctions remain between these AFDC and non-AFDC participants. For example, while the I.R.S. intercept of federal income tax returns is available in AFDC cases for past due support after the child is 18, the child must still be under 18 for I.R.S. intercepts in non-AFDC cases. 42 U.S.C. §664 (c) (2) (1996); 45 C.F.R §303.72 (a) (1994).

Another result of the 1984 amendments was the adoption of an internal regulatory scheme significantly different from the original audit and penalty provisions, which were functionally identical to those which still apply to virtually all welfare entitlement programs. 42 U.S.C. §603 (h) (1984). The new focus was on effective-

---

[7] *Estimates of Cost Avoidance Attributable to Child Support Enforcement*, Advance Sciences, Inc. and SRA Technologies, Arlington, Va. 1987, for the Office of Child Support Enforcement, Family Support Administration, U.S. Dept. of Health and Human Services.

ness and efficiency, rather than technical compliance with mandatory process and procedures defined by the State plan requirements.

In both the 1984 and 1988 amendments to IV-D, Congress decided to compel the States to enact wage withholding statutes, thereby requiring the assistance of private employers for child support enforcement in order to achieve general social benefits. 42 U.S.C. §666 (b) (1984) (amended 1988). There is no clearer indication that the legislative purpose of IV-D was to secure overall benefits to large groups of citizens than the mandate in IV-D to enlist private resources to improve the economic status of children with absent parents. Federal entitlements involve providing money, money equivalents (food stamps), or subsistence needs (housing, medical care, and medicines) to a beneficiary class, from public funds. Title IV-D is not intended to deliver any particular benefits to any particular individuals or family; further, any economic benefits to individuals or families which do result are paid by private, not public funds.

2. Legislative intent reveals no congressional purpose to provide enforcement rights to Title IV-D services.

The foregoing discussion demonstrates that the legislative purpose behind Title IV-D is cost avoidance. In addition, the statutory scheme of Title IV-D establishes that Congress never intended to create enforceable rights to child support enforcement services. Instead, Congress intended to monitor and evaluate State programs, give technical assistance to the States, and, in certain instances, require the States to run more effective child support enforcement programs.

Congress by statute delegated authority to the Secretary of HHS to define what level of performance was required to substantially comply with the federal mandate to operate an effective and efficient IV-D program.[8] 42 U.S.C. §652 (1984). In response, OCSE by regulation added new program performance indicators to the IV-D internal enforcement scheme. The new indicators were designed to compel States to achieve both AFDC cost recovery and welfare cost avoidance by non-AFDC collections, and to set minimum cost-effectiveness standards for State IV-D operations. 45 C.F.R. §§305.20 and 305.98 (1985). At the same time, the Secretary of HHS, through OSCE, developed new program compliance and audit criteria to define "substantial" compliance, as required by the statutory amendment. 42 U.S.C. §603 (h) (1) (1984). The 1985 OSCE regulations provided that for the fiscal year 1984 audit period certain listed audit criteria related primarily to administrative or fiscal matters "must be met" and that the procedures required by nine audit criteria related to basic services provided under a Title IV-D plan "must be used in 75 percent of the cases

---

[8] Prior to 1984, under §403 (h) of the Act a State was subject to a 5% reduction of its AFDC funds if an audit found that the State was not in full compliance with statutory and regulatory requirements. OCSE began performing compliance audits after December 21, 1976, but Congress enacted a moratorium on the 5% penalty and extended the moratorium several times. Therefore, no State actually had its AFDC funding reduced. On August 16, 1984, Congress changed the standard of compliance from full compliance to substantial compliance and provided for gradual reductions starting with a reduction of not less than 1%, nor more than 2% and increasing to a maximum of 5% with each consecutive finding that a State is not complying substantially with Title IV-D requirements. 42 U.S.C. §603 (h) (1) (1984).